SDR

301 NLRB No. 72

D--1743
Rochester, NY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CANNON INDUSTRIES, INC.

and

Case 3--CA--15937

UNITED STEELWORKERS OF AMERICA,
LU-1498A, AFL--CIO--CLC

DECISION AND ORDER

By Chairman Stephens and Members Devaney and Raudabaugh

Upon a charge filed by United Steelworkers of America, LU-1498A on October 1, 1990, and an amended charge filed on November 8, 1990, the General Counsel of the National Labor Relations Board issued a complaint on November 13, 1990, against the Respondent, Cannon Industries, Inc., alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an answer.

On December 17, 1990, the General Counsel filed a Motion for Summary Judgment with the Board. On December 20, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated December 5, 1990, the Acting Regional Director for Region 3 advised the Respondent that failure to file an answer to the complaint by December 12, 1990, would result in a Motion for Summary Judgment being filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a New York State corporation with an office and place of business in Rochester, New York, has been engaged in the production and assembly of automobile parts. During the 12-month period preceding issuance of the complaint, the Respondent sold and shipped from its Rochester, New York facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the United Steelworkers of America (the International) and its Local Union 1498A are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At all times material herein, the International, on behalf of the Local Union, has been the exclusive collective-bargaining representative, by virture of Section 9(a) of the Act, of the Respondent's employees in the following unit, which is appropriate for bargaining within the meaning of Section 9(b) of the Act:

> All regular, full and part-time production and maintenance employees employed by Respondent at its 545 Colfax Street, Rochester, New York location; excluding all office clerical employees, outside truckdrivers, guards and supervisors as defined in the Act, and all other employees of Respondent.

The Respondent's recognition of the International's representative status has been embodied in a series of collective-bargaining agreements, the most recent of which is effective by its terms from September 4, 1988, until September 4, 1991.

Since on or about April 1, 1990, the Respondent has failed to continue in full force and effect all terms of the parties' collective-bargaining agreement by failing to remit to the International dues checked off pursuant to article XXIII---union security of the agreement. Furthermore, since on or about October 1, 1990, the International and Local Union, by letter, have requested the Respondent to furnish them with a list of names, addresses, and phone numbers of all full-time and part-time maintenance and production workers currently employed by the Respondent. The information requested is necessary for, and relevant to, the Unions' performance of their function as exclusive collective-bargaining representative of unit employees. Since on or about October 23, 1990, the Respondent, by letter, has failed and refused to furnish the information requested. We find that the Respondent's failure to remit dues checked off pursuant to the parties' collective-bargaining

agreement and its refusal to furnish requested relevant bargaining information violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing since on or about April 1, 1990, to remit to the International dues checked off pursuant to article XXIII---union security of the parties' collective-bargaining agreement, and by failing and refusing since on or about October 23, 1990 to furnish information requested by the Unions' October 1, 1990 letter, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to adhere to the provision in its current collective-bargaining agreement requiring the Respondent to remit checked off dues to the International, and we shall order the Respondent to remit to the International dues that it has unlawfully failed to pay since on or about April 1, 1990, with interest to be computed as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). We shall also order the Respondent to furnish the information requested by the Unions on October 1, 1990.

ORDER

The National Labor Relations Board orders that the Respondent, Cannon Industries, Inc., Rochester, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL--CIO--CLC, on behalf of Local Union 1498A, as the exclusive representative of employees in the appropriate bargaining unit described below, by failing to continue in full force and effect the provision of a current collective-bargaining agreement requiring the Respondent to remit to the International dues checked off from the pay of unit employees. The appropriate unit is:

> All regular, full and part-time production and maintenance employees employed by Respondent at its 545 Colfax Street, Rochester, New York location; excluding all office clerical employees, outside truckdrivers, guards and supervisors as defined in the Act, and all other employees of Respondent.

(b) Refusing to provide requested information that is necessary and relevant to the Unions' function as exclusive representative of unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to the provision in its current collective-bargaining agreement requiring the Respondent to remit checked off dues to the International, and remit to the International all dues, with interest, that it has failed to remit since April 1, 1990, as set forth in the remedy section of this decision.

(b) Furnish to the Unions information, requested by letter dated October 1, 1990, which is relevant to the duties of an exclusive bargaining representative of unit employees.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment

records, timecards, personnel records and reports, and all other records necessary to analyze the amount due to the International under the terms of this Order.

(d) Post at its Rochester, New York facility copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 31, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL--CIO--CLC, on behalf of its Local Union 1498A, as the exclusive representative of employees in the appropriate bargaining unit described below, by failing to continue in full force and effect the provision of a current collective-bargaining agreement requiring us to remit to the International dues checked off from the pay of unit employees. The appropriate unit is:

> All regular, full and part-time production and maintenance employees employed by Respondent at its 545 Clofax Street, Rochester, New York location; excluding all office clerical employees, outside truckdrivers, guards and supervisors as defined in the Act, and all other employees of Respondent.

WE WILL NOT refuse to provide requested information that is necessary and relevant to the Unions' function as exclusive representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to the provision in our current collective-bargaining agreement, which is effective from September 4, 1988, until September 4, 1991, requiring us to remit checked off dues to the International, and WE WILL remit to the International all dues, with interest, that we have failed to remit since April 1, 1990.

WE WILL furnish to the Unions a list of names, addresses, and phone numbers of all full-time and part-time maintenance and production workers currently employed by us, which is information requested by the Unions on October 1, 1990, and relevant to the duties of an exclusive bargaining representative of unit employees.

CANNON INDUSTRIES, INC.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 111 West Huron Street, Room 901, Buffalo, New York 14202-2387, Telephone 716--846--4951.